

Chapter 3

Communications

This chapter addresses common issues relating to political mailings and other advertisements.

The Political Reform Act does not regulate the truth or accuracy of political communications, but does require reporting of most payments in connection with flyers, mailers, billboards, and radio and television advertising. Identification rules also may apply.

Generally speaking, when a major donor committee pays for a communication supporting or opposing a candidate or ballot measure, the committee has made a nonmonetary contribution unless the payment was not made “at the behest of” the candidate or a committee primarily formed to support or oppose the ballot measure. Payments for communications that expressly advocate the election or defeat of a candidate or measure, which are not made at the behest of the affected candidate or measure committee, are “independent expenditures.”

Whether a communication is a contribution, an independent expenditure, or some other type of reportable payment depends on several factors, including whether the communication “expressly advocates” support of or opposition to a clearly-identified candidate or ballot measure. The information and examples provided below may be of assistance in making that determination. However, it is impossible to address all types of communications. If presented with a specific example, FPPC staff can provide assistance.

Example *A corporation paid \$40,000 for a mailing to voters stating “Vote for Candidate Rossi.” The corporation’s name and address must be on the outside of the mailing. Since the communication expressly advocates support for a clearly-identified*

candidate, the corporation made either a contribution or an independent expenditure, depending upon whether it was made at the behest of the candidate.

Valuing a Mailing

Multiple candidates/measures: If a mass mailing supports or opposes more than one candidate or measure, the fair market value attributable to each may be calculated by prorating the costs based on the amount of space allotted to each candidate or measure supported or opposed in the mailing.

Political and non-political material: The cost of a mailing containing both express advocacy supporting or opposing a ballot measure or candidate as well as nonpolitical material may be prorated. Costs directly associated with the political message are reportable, including staff time of more than 10 percent in a calendar month.

Identification Requirements

Mailings

Sender Identification: When a major donor committee pays for a mailing of 200 or more similar pieces in a calendar month (“mass mailing”), it is subject to identification requirements. All mass mailings must identify the name of the major donor committee and its street address, city, state, and zip code must be printed on the outside of each piece. The type must be at least 6-point and in a color or print that contrasts with the background so that it is easily read.

Expressly Advocating a Ballot Measure

Advertisements: If a contribution totaling \$50,000 or more is made to a committee primarily formed to support or oppose a

ballot measure, the name of the major donor must be included in the primarily formed committee's advertisements if the major donor is one of the two highest contributors to the committee.

(Example) *A corporation made a \$60,000 contribution to the Measure A Committee. Because this was the committee's highest contribution, the corporation's name was identified on television ads as a major funding source.*

Spokespersons: When a major donor committee makes an expenditure of \$5,000 or more to an individual for his or her appearance in an advertisement to support or oppose a ballot measure, the advertisement must include a statement that the individual is being paid for his or her appearance. The statement must be in highly visible Roman font, shown continuously if the advertisement consists of printed or televised materials, or spoken in a clearly audible format if the advertisement is a radio broadcast or telephone message.

In addition, the committee must file the Paid Spokesperson Report, Form 511, as described in Chapter 4.

Communications Identifying State Candidates (No Express Advocacy)

A major donor committee that makes a payment or promise of payment totaling \$50,000 or more for a communication that 1) clearly identifies a state candidate; but 2) does not expressly advocate the election or defeat of the candidate; and 3) is disseminated, broadcast, or otherwise published within 45 days of an election, is required to file Form E-530. (See Chapter 4.) These payments are not required to be reported on the major donor committee campaign statement (Form 461).

Independent Expenditures

Independent expenditures that are broadcasts or mass mailings and support or oppose either candidates or ballot measures, must identify the committee making the independent expenditure. A broadcast includes radio and television ads but not billboards and yard signs.

A brief summary of identification rules is provided below. However, committees should also consult FPPC Campaign Disclosure Manual 6 for Independent Expenditure Committees, because an independent expenditure of \$1,000 or more to support or oppose a candidate or measure triggers additional disclosure reports.

Identification: The name of the committee paying for the advertisement must be presented in a clear and conspicuous manner to give the reader or listener adequate notice of the identity of the committee. Broadcast information also must be appropriately conveyed to the hearing impaired.

The required disclosure information must be:

Video: both displayed in writing and spoken either at the beginning or at the end of the communication. The written statement must be legible to the average viewer and be displayed for not less than four seconds. However, if the disclosure statement is displayed for at least five seconds of a broadcast of 30 seconds or less, or 10 seconds of a 60 second broadcast, a spoken disclosure statement is not required.

Audio: spoken in a clearly audible manner at the beginning or end of the communication and must be at least three seconds in duration.

Mass Mailings: printed clearly and legibly in type no less than 10-points in size and in a contrasting color to the background on which it appears. If a single print media

advertisement consists of multiple pages, folds, or faces, the disclosure requirement applies only to one page, fold, or face. (Sender identification on the outside of the mailing is also required.)

Authority

The following Government Code sections and Title 2 regulations provide authority for the preceding information in this chapter:

Government Codes Sections

- 82015 *Contribution.*
- 82031 *Independent Expenditure.*
- 82041.5 *Mass Mailing.*
- 84305 *Requirements for Mass Mailing.*
- 84501 *Advertisement.*
- 84503 *Disclosure; Advertisement For or Against Ballot Measures.*
- 84504 *Identification of Committee.*
- 84506 *Independent Expenditures; Advertisements.*
- 84511 *Ballot Measure Ads; Paid Spokesperson Disclosure.*
- 85310 *Communications Identifying State Candidates.*

Title 2 Regulations

- 18225.7 *Made at the Behest of.*
- 18435 *Definition of Mass Mailing and Sender.*
- 18450.1 *Definitions. Advertisement Disclosure.*
- 18450.4 *Contents of Disclosure Statements. Advertisement Disclosure.*
- 18450.11 *Spokesperson Disclosure.*
- 18531.10 *Communications Identifying State Candidates.*
- 18550.1 *Independent and Coordinated Expenditures.*